209.

SUPREME COURT OF THE UNITED STATES.

No. 180.

JAMES KELSEY AND THOMAS P. HOTCHKISS, PLFF'S IN ER.,

vs.

ROBERT FORSYTH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

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UNITED STAEES OF AMERICA,
District of Illinois.

Pleas in the circuit court of the United States, for the district of Illinois, held at the city of Springfield, in the district aforesaid, before the Hon. Thomas Drummond, judge of the district court of the United States for the district of Illinois, and in the absence of the Hon. John McLean, one of the justices of the Supreme Court of the United States, sole judge of said circuit court, on Wednesday, the 24th day of January, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the seventy-ninth year.

ROBERT FORSYTH
vs.
JAMES KELSEY and Joshua P. Hotchkiss. } Ejectment.

Be it remembered, that heretofore, to wit, on the 18th day of July, of the term of July, in the year of our Lord one thousand eight hundred and forty-eight, of the circuit court of the United States for the district of Illinois, at Springfield, came into court the said Robert Forsyth, plaintiff, by H. O. & A. L. Merriman, his attorneys, who filed in open court the bond, declaration, and notice in said entitled cause, which are in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
State and District of Illinois.

Circuit Court, July term, A. D. 1848.

Know all men by these presents, that I, Peter Menard, of the county of Tazewell, and State and district of Illinois, am held and firmly bound unto James Kelsey and Joshua Hotchkiss, and to the officers of the circuit court of the United States for the district of Illinois, in the sum of five hundred dollars, to be paid to said Kelsey & Hotchkiss, and to the said officers aforesaid, their certain attorneys, heirs, executors, administrators, or assigns, or successors in office, to which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, and every of them, jointly, severally, and firmly by these presents.

Witness my hand and seal, the 30th day of June, in the year of our Lord one thousand eight hundred and forty-eight.

The condition of the above obligation is such, that whereas Robert Forsyth has this day, to wit, at the date above of the written, instituted a suit in the said circuit court of the United States for the district of Illinois, against said Kelsey & Hotchkiss: Now, if the said Robert Forsyth, his heirs, executors, or administrators, shall well and truly discharge all costs that may accrue and be adjudged against him, the said plaintiff, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in his behalf, if judgment shall pass against the said defendant, and the costs, and fail to be collected of said Kelsey & Hotchkiss, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void; otherwise of full force and effect.

P. MENARD, [SEAL.]

Narr.

In the circuit court of the United States, in and for the district and State of Illinois, of the July term, in the year of our Lord one thousand eight hundred and forty-eight.

UNITED STATES OF AMERICA,
District and State of Illinois.

Robert Forsyth, plaintiff in this suit, citizen of the State of Missouri, one of the United States of America, complains of James Kelsey and Joshua P. Kotchkiss, defendants in this suit, who are citizens and inhabitants of the State of Illinois, in the United States of America, of a plea wherefore they, the said defendants, with force and arms, &c., entered into the following described premises:

For that, heretofore, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and forty-eight, the said plaintiff was possessed of certain premises, situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: Lot No. seven (7) confirmed to Thomas Forsyth, by the confirmatory act of Congress, of 3d March, A. D. 1823, entitled an act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, and part of the southeast fractional quarter of section No. nine, (9,) in township No. eight (8) north, in range No. eight (8) east of the fourth principal meridian, according to the survey approved 1st September, A. D. 1840, by the surveyor of public lands in the States of Illinois and Missouri, and being so possessed thereof, the said defendants, afterwards, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and forty-eight, entered into such premises, and that they unlawfully withhold from the plaintiff the possession thereof; and said plaintiff avers that he claims title to said premises in fee, and that said plaintiff is a

citizen and inhabitant of the State of Missouri, in the United States of America, and that they, the said defendants, are citizens and inhabitants of the State of Illinois, in the United States of America. And said plaintiff further avers that the aforedescribed premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars.

Wherefore, said plaintiff says that he is injured, and has sustained damages to a large amount, to wit, one thousand dollars, and therefore he sues, &c.

H. O. MERRIMAN,
Attorney for Plaintiff.

Notice.

To the above named defendant.

Take notice that—1st. On the first day of the July term of the circuit court of the United States, within and for the district and State of Illinois, to be held at the city of Chicago, in said State of Illinois, on the first Monday of July, A. D. one thousand eight hundred and forty-eight, or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court.

2d. That upon filing the same, a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3d. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Yours, &c.,
H. O. MERRIMAN,
Attorney for Plaintiff.

STATE OF ILLINOIS,
Peoria County.

A. L. Merriman, being first duly sworn, deposes and says, that he served James Kelsey, the defendant, a declaration and notice, of which the above are duplicate copies, this 30th day of June, A. D. 1848, at Peoria, by leaving the same with a white person of his family of the age of ten years and upwards, at the dwelling house of such defendant, the said defendant, Kelsey, then being absent.

A. L. MERRIMAN.

Subscribed and sworn to before me, this 30th day of June, A. D. 1848.

WILLIAM MITCHELL,
Commissioner.

STATE OF ILLINOIS,
Cook County, ss:

H. O. Ryerson, being duly sworn, deposes and says, that he served a declaration and notice, of which the above are duplicate copies, on Joshua P. Hotchkiss, one of the defendants within named, this 7th day of July, A. D. 1848, at Chicago, by leaving the same with him, said defendant.

HENRY OGDEN RYERSON.

Subscribed and sworn to before me, this 7th day of July, A. D. 1848.

GEO. W. MEEKER,
Commissioner, &c.

Endorsed: Filed July 8th, 1848.

WM. POPE,
Clerk.

And on the same day, to wit, 8th day of July, in the July term, A. D. 1848, of said circuit court, in the record of the proceedings thereof in the above entitled cause, before the Hon. Nathaniel Pope, district judge, is the following entry, to wit:

Order to plead.

ROBERT FORSYTH
vs.
JAMES KELSEY and JOSHUA P. HOTCHKISS. } Ejectment.

This day came the plaintiff, by his attorney, and filed his declaration in ejectment, and the notice in writing thereto attached; and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendants, it is, on motion of said plaintiff, by his attorney, ordered that said defendants plead thereto in twenty days, or that their default be entered.

And afterwards, to wit, on the 24th day of July, A. D. 1848, said defendants, by O. M. Dorman, their attorney, filed in the clerk's office of said circuit court their plea in the above entitled cause, in the words and figures following, to wit:

Plea.

CIRCUIT COURT OF THE UNITED STATES,
For the District and State of Illinois.

December term, 1848.

JAMES KELSEY and Joshua P. Hotchkiss
ads.
ROBERT FORSYTH. } In ejectment.

And the said defendants, by O. M. Dorman, their attorney, come

and defend the force and injury, &c., and say they are not guilty of unlawfully withholding the premises claimed by the plaintiff, as alleged in his said declaration. And of this they put themselves upon the country, &c.

O. M. DORMAN,
Deft's Atty.

Endorsed: Filed 24th July, 1848.

WM. POPE, *Clk.*

And afterwards, to wit, on the 15th day of June, A. D. 1849, said defendants, by Ballance & Powell, their attorneys, filed in the office of the clerk of said circuit court their motion to dismiss suit, in the words and figures following, to wit:

Motion to dismiss.

CIRCUIT COURT OF THE UNITED STATES.

June term, A. D. 1848.

ROBERT FORSYTH
vs.
KELSEY & HOTCHKISS.

And the said defendants, by Ballance & Powell, their att'y, come and move the court to dismiss this suit, because no bond for costs was filed at the time the suit was commenced.

BALLANCE & POWELL,
Atty. for Def'ts.

Endorsed: Filed June 15th, 1849.

WM. POPE, *Clerk.*

And afterwards, to wit, on the 23d day of June, in the June term, A. D. 1849, of said circuit court, held at Springfield, in the record of the proceedings thereof in the above entitled cause, before the Hon. Nath'l Pope, district judge, is the following entry, to wit:

Trial.

ROBERT FORSYTH
vs.
JAMES KELSEY and
JOSHUA P. HOTCHKISS. } Ejectment.

This day came the parties, by their attorneys; and issue being joined, thereupon came a jury, to wit, Daniel Turney, William Lowry, W. H. Herndon, Daniel E. Ruckel, R. H. Lesure, Wm.

Porter, Samuel C. Parks, R. B. Slocum, Calvin Francis, William Watson, James Wightman, and E. B. Zunstall, who, being duly elected, tried, and sworn well and truly to try the issue joined, upon their oaths do say: We, the jury, find the defendants guilty of unlawfully withholding from the said plaintiff the possession of the premises in said plaintiff's declaration described. We further find, that at the time of the commencement of this suit, said plaintiff was and still is the owner in fee simple of the following described premises, to wit, and we assess his damages to one cent, viz:

That portion of lot number seven, (7,) in the village of Peoria, in the State of Illinois, confirmed to Thomas Forsyth by the confirmatory act of the Congress of the United States of the 3d of March, A. D. 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, and State of Illinois, as designated on the plat of the survey of public lands in the States of Illinois and Missouri," approved September the first, A. D. 1840, described and bounded as follows, to wit: Beginning at a post in the southeasterly line of said lot number seven, (7,) from which the most easterly corner of said lot bears north forty-three and a half (43½) degrees east, sixty-six (66) feet; thence south forty-three and a half (43½) degrees west, seventy-five (75) feet; thence north forty-two and a-half (42½) degrees west, one hundred and seven (107) feet, to Water street, as laid out by Bigelow and Underhill, in their addition to the town of Peoria, on the southeast quarter of section nine, (9,) township eight (8) north, in range eight, (8,) east of the 4th principal meridian, in Peoria county, State of Illinois; thence northeastwardly along said Water street, seventy-five (75) feet; thence south forty-two and a half (42½) degrees east, one hundred and five (105) feet, to the place of beginning. It is thereupon considered and adjudged by the court that said plaintiff recover of and from said defendants the possession of the above described premises. It is further ordered that said plaintiff from said defendants his damages of one cent, according to the verdict of the jury, and that he have a writ of possession for said above described premises, and an execution for costs.

And afterwards, to wit, on the 21st day of December, A. D. 1854, said defendants, by their attorney, filed in the office of the clerk of said court their motion for a new trial and affidavit, in the words and figures following, to wit:

Motion to execute judgment and grant a new trial.

In the United States circuit court for the district of Illinois. Of the December term 1854.

ROBERT FORSYTH
vs.
JAMES KELSEY,
JOSHUA P. HOTCHKISS. } Ejectment.

Said defendants, by Charles Ballance, come and moves the court

to set aside the judgment entered herein and grant a new trial, under the statute of Illinois, in such case made and provided, *nunc pro tunc*, for the reason that it was a mere omission of the clerk that it was not done at the time, and in proof thereof, he, the said Ballance, sets forth the following state of facts, to wit: Said Kelsey never had any right or claim to the premises in said declaration mentioned, only as tenant to said Hotchkiss, and that he occupied no inclosure, but only a house which stood upon the N. E. side of lot two, in block fifty, in Bigelow and Underhill's addition to Peoria, the premises in dispute. That said Hotchkiss claimed to be the owner of said house and twenty-two feet of ground off the N. E. side of said lot upon which said house stood, being a piece of ground twenty-two feet wide, and extending from Water street to the river; and the said Hotchkiss did not at said time own nor pretend to own, nor claim a right of possession to any other ground in that vicinity but said twenty-two feet.

Nor did said Kelsey, by virtue of the possession of said house, claim the construction or otherwise possession of any other ground but said twenty-two feet.

When this case was tried, on the 23d day of June, 1849, I was not as well prepared for the defence as I hoped to be; and having a right under our statute to one new trial, as a matter of course, upon the payment of costs, and not being able to show cause for a continuance, I went through the form of a trial, without taking any note of the evidence, or making out a bill of exceptions, so as to prepare the case for the Supreme Court. Furthermore, as I intended immediately to set aside the judgment that would be entered in said cause, I was indifferent as to its form and substance.

Upon an examination made to-day, I find for the first time that said judgment not only covers said twenty-two feet of ground, but more than twice as much other ground adjoining, to which neither said Kelsey nor Hotchkiss then had or pretended to have any right, title, or interest, and which was not in the possession of either of them, either actually or by construction.

At the time of said trial, I was the actual owner of the premises, having bought of said Hotchkiss, and was my own attorney, and I never bought, or claimed, or defended for any but said twenty-two feet, nor had I any possession of it. And this was well known, through all the various stages of this suit, both to said defendant and his attorneys.

Pursuant to said intention, I did then, as I supposed, obtain, upon the payment of cost, pursuant to said statute, an order to be made upon the records of this court, vacating said judgment, and granting a new trial. Said entry ought to have been made, and the parties and attorneys on both sides supposed it was made. And through all the stages of the case, for more than five years, all parties acted upon the supposition that it made, until it was dis-

covered, at the present term of the court, that the records contain no such entry.

This took place when his honor, Nathaniel Pope, presided in this court, whose custom was, when a new trial of action of ejectment was prayed for, under the Illinois statute, upon payment of costs, to grant, upon the payment of the costs, upon a certain day in future. In this case, it was granted upon the payment of the costs by the first day of October then next following. On the fifth day of September, 1849, I transmitted to William Pope, clerk of this court, thirty-four dollars, by mail, to pay said costs. Shortly afterwards I received from him an acknowledgment of the receipt of it, in the words and figures following, to wit:

Wm. Pope's letter.

SPRINGFIELD, *September 14th*, 1849.

DEAR SIR: The time is on or before the 1st Oct., for the payment of costs, to insure a new trial. Your letter enclosing thirty-four dollars came safely to hand.

Yours, truly, &c.,

WM. POPE.

The bill of costs, as it is now made up, is, it is true, five cents more than this sum. This discrepancy, I cannot explain; but that it was received in full, and was satisfactory to all parties, I infer from the fact, that although I have all the time avowed myself to be the landlord, and responsible for costs, neither the clerk nor any one else has, from that day to this, expressed to me any dissatisfaction with the amount so paid, nor has demanded of me any more, nor have I ever suspected any one was ever dissatisfied with the same.

Said cause has regularly been docketed and continued, from term to term, since June, 1849, as the records of the court plainly show.

On the 28th day of Nov., 1850, plaintiff took the deposition of Henry Moran, and on the 14th day of December, 1850, he filed it in this cause.

On the 12th of Dec., 1849, defendant filed a motion to compel plaintiff to consolidate this suit with another suit. Defendants' counsel resisted the motion, without making any objections to the suit being on the docket.

On the 14th day of December, 1850, plaintiff's counsel filed in this cause the depositions of Mrs. Mette and Antoine Smith, which had been taken subsequent to said judgment.

On the 20th of December, 1850, the depositions of William Whistler and James Abbott, which had also been taken since said judgment, were filed in said cause.

On the 13th day of December, 1850, the deposition of John H. Kinzie, also taken since said judgment, was filed in this case.

This deposition seems to have been taken by Robert Forsyth himself, at Chicago.

December 20th, 1850, exceptions were filed to plaintiff's depositions. On the 14th of December, 1850, the deposition of Sarah Bouche, taken by plaintiff, was filed in this cause.

On the 14th day of December, 1850, the deposition of Joseph Auboshon was filed.

At the December term, 1850, Isaac Underhill attended ten days, after travelling seventy-four miles, as a witness in said cause, and filed an affidavit of the fact. On the 13th of January, 1853, I filed a bill in chancery in this court to enjoin said suit. On the 21st of January, 1853, I moved for an injunction, and the cause was argued. On the 22d, an injunction was granted; on the same day an injunction bond was filed.

At the July term, 1853, this cause was continued, and sixty days longer granted to defendant to answer in.

At the December term, 1853, this cause was called and dismissed, at a moment when neither I nor any one to answer for me was present.

On the 8th of July a motion was filed to reinstate the cause.

At the last term of this court, the record expressly shows that the above law case was continued by consent of parties. Other continuances were made with the consent of plaintiff's attorney. One entry shows that it was continued by his consent in my absence, and no one present to answer for defendants.

C. BALLANCE.

I, Charles Ballance, do solemnly swear that the above statement is true, so far as I state facts within my own knowledge, and so far as I state them from information of others, I believe them to be true; and that the facts stated from the records of this court, are stated after a careful personal examination of the records, and I believe them to be true.

C. BALLANCE.

Subscribed and sworn to before me, this 21st day of Dec., 1854.

S. A. CORNEAN,
U. S. Com'sr Dist. Ills.

Endorsed: Filed Dec. 21st, 1854.

WM. POPE,
Cl'k.

And afterwards, to wit, on the 24th day of January, A. D. 1855, in the December term, A. D. 1854, of said circuit court, held at Springfield, the Hon. Thomas Drummond, district judge, presiding, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

Motion overruled.

ROBERT FORSYTH
vs.
JAMES KELSEY and Joshua P. Hotchkiss. } Ejectment.

This day came the parties, by their attorneys; and the defendants' motion to vacate the judgment herein, nunc pro tunc, having been argued, it is ordered by the court that said motion be allowed upon the defendants admitting themselves to be in possession of a part of the property described in the declaration. Whereupon it is ordered by the court that the judgment rendered herein, on the 23rd day of June, A. D. 1849, be now vacated, set aside, and for nothing held, as of the said 23d day of June, A. D. 1849, and a new trial had herein.

And afterwards, to wit, on the same day, to wit, the 24th day of January, A. D. 1855, in the record of the proceedings of said circuit court in said entitled cause, the Hon. Thomas Drummond, district judge, presiding, appears the following entry, to wit:

2d trial without jury.

ROBERT FORSYTH
vs.
JAMES KELSEY and Joshua P. Hotchkiss. } Ejectment.

This day came the parties, by their attorneys; and issue being joined, by agreement a jury is waived, and this cause is submitted to the court for trial; and the court having heard the evidence, finds the defendants guilty of unlawfully withholding from the possession of the plaintiff of a part of the premises described in the declaration, to wit: "That portion of lot number seven, (7,) in the village of Peoria, in the State of Illinois, confirmed to Thomas Forsyth by the confirmatory act of Congress of the United States, of the 3d of March, A. D. 1823, entitled, 'An act to confirm certain claims to the lots in the village of Peoria, and State of Illinois, as designated on the plat of the surveyor of public lands, in the States of Illinois and Missouri,' approved September the first, A. D. 1840, described and bounded as follows, to wit: Beginning at a post in the southeasterly line of said lot number seven, (7), from which the most easterly corner of said lot runs north forty-three and one-half (43½) degrees east, sixty-six (66) feet; thence south forty-three and a half (43½) degrees west, seventy-five (75) feet; thence north forty-two and a half (42½) degrees west, one hundred and seven (107) feet, to Water street, as laid out by Bigelow and Underhill, in their addition to the town of Peoria, in the southeast

quarter of section nine (9), township eight (8) north, in range eight (8) east, of the 4th principal meridian, in Peoria county, State of Illinois; thence northeasterly along said Water street, seventy-five (75) feet; thence south forty-two and a half ($42\frac{1}{2}$) degrees east, one hundred and five (105) feet, to the place of beginning." The court further finds, that at the commencement of this suit, the plaintiff was and still is the owner in fee-simple of the above described premises, and assesses his damages at one cent.

It is therefore considered and adjudged by the court, that the said plaintiff recover of and from the said defendants the possession of the above described premises, according to the finding of the court. And it is further ordered that the said plaintiff recover of and from the said defendants his damages of one cent, according to the finding of the court, as well as his costs and charges herein expended, amounting to the sum of dollars and cents, and that he have a writ of possession for said premises, and an execution for costs.

New trial refused.

Whereupon the defendants, by their attorney, moves the court for a new trial herein; and it is ordered by the court that said motion be denied.

Bill of exceptions.

And afterwards, to wit, on the same day, to wit, the 24th day of January, A. D. 1855, said defendants, by their attorney, filed in said circuit court with the clerk thereof, their bill of exceptions, in the words and figures following, to wit:

Dec. term, 1854.

ROBERT FORSYTH
vs.
JAMES KELSEY Joshua P. Hotchkiss. } In ejectment.

Be it remembered, that before the above cause was called for trial, the attorney of the defendants, discovering that no order had been entered vacating the judgment herein, and granting a new trial, under the statute of Illinois in such case made and provided: moved the court to make said order, nunc pro tunc; and in support of said motion filed the following affidavit:

IN THE UNITED STATES CIRCUIT COURT,
For the District of Illinois.

Of the December term, 1854.

ROBERT FORSYTH
vs.
JAMES KELSEY and Joshua P. Hotchkiss. } Ejectment.

Said defendants, by Charles Ballance, come and move the court to set aside the judgment entered herein, and grant a new trial, under the statute of Illinois in such case made and provided, nunc pro tunc, for the reason it was a mere omission of the clerk that it was not done at the time; and in proof thereof, he, the said Ballance, sets forth the following state of facts, to wit:

Said Kelsey never had any right or claim to the premises in said declaration mentioned, only as tenant to said Hotchkiss, and that he occupied no enclosure, but only a house which stood upon the N. E. side of lot two, in block fifty, in Bigelow and Underhill's addition to Peoria, the premises in dispute. That said Hotchkiss claimed to be the owner of said house and twenty-two feet of ground off the N. E. side of said lot, upon which said house stood, being a piece of ground twenty-two feet wide, and extending from Water street to the river. And the said Hotchkiss did not, at said time, own nor pretend to own, nor claimed a right of possession to any other ground in that vicinity but said twenty-two feet; nor did said Kelsey, by virtue of the possession of said house, claim the construction or otherwise possession of any other ground but said twenty-two feet.

When this case was tried, on the twenty-third day of June, 1849, I was not as well prepared for the defence as I hoped to be; and having a right, under our statute, to one new trial, as a matter of course, upon the payment of costs, and not being able to show cause for a continuance, I went through the form of a trial, without taking any note of the evidence, or making out a bill of exceptions, so as to prepare the case for the Supreme Court. Furthermore, as I intended immediately to set aside the judgment that would be entered in said cause, I was indifferent as to its form and substance. Upon an examination made to-day, I find, for the first time, that said judgment not only covers said twenty-two feet of ground, but more than twice as much other ground adjoining, to which neither said Kelsey nor Hotchkiss then had or pretended to have any right, title, or interest, and which was not in the possession of either of them, either actually or by construction.

At the time of said trial, I was the actual owner of the premises, having bought of said Hotchkiss, and was my own attorney. And I never bought, or claimed, or defended for any but said twenty-two feet, nor had I any possession of it. And this was well known,

through all the various stages of this suit, both to said defendant and his attorneys.

Pursuant to said intention, I did then, as I supposed, obtain, upon the payment of cost, pursuant to said statute, an order to be made upon the records of this court, vacating said judgment, and granting a new trial. Said entry ought to have been made, and the parties and attorneys on both sides supposed it was made; and through all the stages of the case, for more than five years, all parties acted upon the supposition that it was made, until it was discovered, at the present term of the court, that the records contain no such entry. This took place when his honor, Nathaniel Pope, presided in this court, whose custom was, when a new trial of an action of ejectment was prayed for, under the Illinois statute, upon payment of the costs, to grant, upon the payment of the costs, upon a certain day in future. In this case, it was granted, upon the payment of the costs, by the first day of October then next following. On the fifth day of September, 1849, I transmitted to William Pope, clerk of this court, thirty-four dollars, by mail, to pay said costs. Shortly afterwards I received from him an acknowledgment of the receipt of it in the words and figures following, to wit:

SPRINGFIELD, *Sept.* 14*th*, 1849.

DEAR SIR: The time is on or before the 1st Oct., for the payment of costs, to ensure a new trial. Your letter enclosing thirty-four dollars, came safely to hand.

Yours, &c.,

WM. POPE.

The bill of costs, as it is now made up, is, it is true, five cents more than this sum. This discrepancy I cannot explain; but that it was received in full, and was satisfactory to all parties, I infer from the fact, that although I have all the time avowed myself to be the landlord, and responsible for costs, neither the clerk nor any one else has, from that day to this, expressed to me any dissatisfaction with the amount so paid, nor has demanded of me any more, nor have I ever suspected any one was ever dissatisfied with the same.

Said cause has regularly been docketed and continued, from term to term, since June, 1849, as the record of the court plainly show.

On the 28th day of Nov., 1850, plaintiff took the deposition of Henry Moran, and on the 14th day of December, 1850, he filed it in this cause.

On the 12th of Dec., 1849, defendant filed a motion to compel plaintiff to consolidate this suit with another suit. Defendants' counsel resisted the motion, without making any objections to the suit being on the docket.

On the 14th day of December, 1850, plaintiff's counsel filed in

this cause the depositions of Mrs. Mette and Antoine Smith, which had been taken subsequent to said judgment.

On the 20th of December, 1850, the depositions of William Whistler and James Abbott, which had also been taken since said judgment, were filed in said cause.

On the 13th day of December, 1850, the deposition of John H. Kinzie, also taken since said judgment, was filed in this case.

This deposition seems to have been taken by Robert Forsyth himself, at Chicago.

December 20th, 1850, exceptions were filed to plaintiff's depositions. On the 14th of December, 1850, the deposition of Sarah Bouche, taken by plaintiff, was filed in this cause.

On the 14th day of December, 1850, the deposition of Joseph Auboshon was filed.

At the December term, 1850, Isaac Underhill attended ten days, after traveling seventy-five miles, as a witness in said cause, and filed an affidavit of the fact. On the 13th of January, 1853, I filed a bill in chancery in this court to injoin said suit.

On the 21st of January, 1853, I moved for an injunction, and the cause was argued.

On the 22nd an injunction was granted; on the same day an injunction bond was filed.

At the July term, 1853, this cause was continued, and sixty days longer granted to defendant to answer in.

At the December term, 1853, this cause was called and dismissed at a moment when neither I nor any one to answer for me was present.

On the 8th of July a motion was filed to reinstate the cause.

At the last term of this court, the record expressly shows that the above law case was continued by consent of parties.

Other continuances were made with the consent of plaintiff's attorney. One entry shows that it was continued by his consent in my absence, and no one present to answer for defendants.

C. BALLANCE.

I, Charles Ballance, do solemnly swear that the above statement is true, so far as I state facts within my own knowledge; and so far as I state them from information of others, I believe them to be true; and that the facts stated from the records of this court are stated after a careful personal examination of the records, and I believe them to be true.

C. BALLANCE.

Subscribed and sworn to before me this 21st day of December, 1854.

S. A. CORNEAN,
U. S. Com'sr, Dist. Ills.

Endorsed: Filed Dec. 21st, 1854.

WM. POPE, *Clerk.*

But the court refused to allow said motion, except on the condition that defendants would admit that they were in possession of that part of the premises claimed in the declaration found by the jury in their verdict of June 23d, 1849.

Defendants declined doing so, for the reason that they were not in possession to that extent, and never had been; and that therefore said admission would not only be unjust towards themselves but towards others who were not in court. And thereupon they filed the following agreement and disclaimer:

Disclaimer.

JAMES KELSEY,
JOSHUA P. HOTCHKISS,
ads.
ROBERT FORSYTH.
} In ejectment.

Said defendants admit, that at the commencement of this suit, they were in possession of twenty-two feet of the northeast side of lot two, of block fifty, according to Bigelow and Underhill's addition to Peoria, and that so much of said twenty-two feet as is not in French street A, according to Brown's plat, is covered by Forsyth's French claim, No. seven, according to said last mentioned plat; and that as to all the other ground in and by said declaration claimed, as belonging to said claimant, and from which said defendants (as is alleged) ejected him, defendants say that they, the said defendants, at the time of the commencement of this suit, had not, nor claimed to have, nor have they now, nor do they claim to have, either jointly or severally, any title, possessory or otherwise, but disavow and disclaim to have any title, possessory or otherwise, to the same, or any part thereof, either now or at the time of the commencement of this suit, or at any time since.

C. BALLANCE,
For Deft's.

Endorsed: Filed Jan'y 24th, 1855.

WM. POPE,
Clk.

And moved the court to vacate said judgment and allow a new trial under said statute; but the court still refused to allow said *said* order to be made, except upon the terms aforesaid. Whereupon, said defendants, protesting that they did not own and were not in possession of any but twenty-two feet of said ground, at the time of the commencement of this suit, or at any time since, never-

theless, for the purpose of again getting this case into court, made said admission.

And be it further remembered, that afterwards, to wit, upon the calling of this cause for trial, by the mutual agreement of the parties, and in accordance with the laws and practice of this State, a jury was waived, and both matters of law and fact were submitted to the court, upon the distinct understanding that the right of either party should be full and perfect to object to the admission of incompetent evidence, and the refusal to admit that which was competent; and with the same privilege of excepting to the rulings of the court in either case, as though the cause were tried by a jury; and with the right to either party to avail himself, in the Supreme Court, of any erroneous ruling in this court, precisely as though the cause had been submitted to a jury, and with liberty to either party, if it should be necessary to the hearing of this cause in the Supreme Court, to treat the evidence introduced in this cause in the nature of a special verdict.

Act of 1820.

And thereupon the plaintiff, to maintain the issue on his part, read in evidence:

1st. An act of Congress, approved May 15th, 1830, entitled, "An act for the relief of the inhabitants of the village of Peoria, in the State of Illinois," as found in the United States Statutes at Large.

Act of 1823.

And 2nd. An act of Congress, approved March 3rd, 1823, entitled, "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois."

3d. He offered a patent to the legal representatives of Thomas Forsyth, which is in the words and figures following, to wit:

Patent to Forsyth.

The United States of America, to whom these presents shall come, greeting:

Whereas, there has been deposited in the general land office a certificate, numbered sixteen, of the register and receiver at the land office at Edwardsville, Illinois, whereby it appears that in the report, dated 10th November, 1820, of Edward Coles, register of the land office, at Edwardsville, Illinois, the claim of Thomas Forsyth, under John Baptist Maillet, and in right of his own occupancy and cultivation, is entered as number seven. And whereas, it further appears, from certificate aforesaid, that the said John Baptist Maillet is the inhabitant or settler within the purview of the confirmatory act of Congress, approved 3rd March, 1823, entitled, "An act to

confirm certain claims to lots in the village of Peoria, in the State of Illinois," and that it has appeared to the satisfaction of the said register and receiver, that the said inhabitant or settler did not, prior to the said act of 3rd March, 1823, receive "a confirmation of claims or donation of any tract of land or village lot from the United States," and that the legal representatives of the said Thomas Forsyth, under said Maillet, in virtue of the confirmatory act aforesaid, are entitled to a patent for a certain lot described as follows, to wit: The lot containing one hundred and two thousand nine hundred and thirty-three square feet and ninety-three hundredths of a square foot, surveyed and designated as covered by said claim number seven, excluding therefrom the tract or portion of said lot containing twenty-seven thousand four hundred and forty-nine square feet and seven hundredths of a square foot, covered by claim numbered fourteen, of Jacques Mette, also under said Maillet—said claim numbered seven being situated in the south-east fractional quarter of fractional section nine, in township eight north, of range eight east, of the fourth principal meridian, Illinois, according to the survey approved 1st September, 1840, by the survey of the public lands in the States of Illinois and Missouri." And whereas, in the confirmatory act aforesaid of the 3rd March, 1823, it is provided that nothing in this act contained shall be so construed as to affect the right, if any such there be, of any other person or persons to the said lots, or any part of them, derived from the United States or any other source whatever, &c."

Now know ye, that in the consideration of the premises, and pursuant to the second section of the act aforesaid of the 3rd March, 1823, there is granted by the United States to the legal representatives of the said Thomas Forsyth, and to their heirs, subject to the proviso aforesaid, the lot of land above described as covered by the said claim number seven, but expressly excluding therefrom the portion of the said lot covered by claim number fourteen aforesaid—to have and to hold the said lot of land, with the appurtenances, unto the said legal representatives of Thomas Forsyth, and to their heirs and assigns forever, subject to the proviso and exclusion aforesaid.

In testimony whereof, I, James K. Polk, President of the United States, have caused these letters to be made patent, and the seal of the general land office to be hereunto affixed.

Given under my hand, at the city of Washington, the sixteenth day of December, in the year of our Lord one thousand [SEAL.] eight hundred and forty-five, and of the independence of the United States the seventieth.

By the President:

JAMES K. POLK.

By J. KNOX WALKER, *Sec'y.*

S. H. LAUGHLIN,
Recorder of the General Land Office.

To the introduction of which defendants objected, but the court overruled said objection, and said patent was received in evidence.

4th. He then offered in evidence two plats certified by John Loughborough, surveyor general of Illinois and Missouri, which were as follows:

[For plat, see original, page 32.]
[For plat, see original, page 33.]

To the introduction of which plats in evidence defendants objected, because they were not from the proper office. They ought to have been certified by the Secretary of the Treasury or commissioner of the general land office, where the original are; but the court overruled said objection, and said plats were read in evidence.

Coles' report.

5th. They then offered in evidence what purports to be a report of Edward Coles, register of the land office at Edwardsville, Illinois, found in volume 3, at page 421, of a series of printed books called American State Papers, public lands, and printed by Duff Green in 1834, and selected and edited, under the authority of the Senate of the United States, by Walter Lowrie, secretary of the Senate; to the reading of which the defendant objected, because this did not appear to be the original report, but a printed copy only, and because neither said copy nor the book in which it was found is made evidence by any act of Congress. But the court overruled said objection, and said book was read in evidence.

6th. Admitted, as aforesaid, that defendants were in possession, according to the finding of the jury, June 23d, 1849.

7th. Admitted that plaintiff held by proper conveyances such right as the patent aforesaid confers, as the heir and grantee of Thomas Forsyth.

Here plaintiff closed, and defendant, to maintain the issue on his part, gave evidence.

1st. A patent, Jan'y 5th, 1838, from the United States to John Bogardus, was as follows:

Certificate No. 13258.

The United States of America, to all to whom these presents shall come, greeting: Whereas, John L. Bogardus, of New York county, New York, has deposited, in the general land office of the United States, a certificate of the register of land office at Quincy, whereby it appears that full payment has been made by the said John L. Bogardus, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provisions for the sale of the public lands for the southeast frac-

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LAND OFFICE, QUINCY, ILL'S,
2d June, 1848.

I hereby certify, that it appears from the records of this office,

To the introduction of which defendants objected, but the court overruled said objection, and said patent was received in evidence.

4th. He then offered in evidence two plats certified by John Loughborough, surveyor general of Illinois and Missouri, which were as follows:

[For plat, see original, page 32.]
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6th. Admitted, as aforesaid, that defendants were in possession, according to the finding of the jury, June 23d, 1849.

7th. Admitted that plaintiff held by proper conveyances such right as the patent aforesaid confers, as the heir and grantee of Thomas Forsyth.

Here plaintiff closed, and defendant, to maintain the issue on his part, gave evidence.

1st. A patent, Jan'y 5th, 1838, from the United States to John Bogardus, was as follows:

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The United States of America, to all to whom these presents shall come, greeting: Whereas, John L. Bogardus, of New York county, New York, has deposited, in the general land office of the United States, a certificate of the register of land office at Quincy, whereby it appears that full payment has been made by the said John L. Bogardus, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provisions for the sale of the public lands for the southeast frac-

6. [illegible]

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tional quarter of section nine, in township eight north, of range eight east, in the district of lands subject to sale at Quincy, Illinois, containing twenty-three acres and ninety-three hundreths of an acre, according to the official plat of the survey of the lands returned to the general land office by the surveyor general, which said tract has been purchased by the said John L. Bogardus. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said John L. Bogardus, and to his heirs, the said tract above described, to have and to hold the same, together with all and singular the rights, privileges, immunities, and appurtenances, of whatever nature thereunto belonging, unto the said John L. Bogardus, and to his heirs and assigns forever, subject, however, to all the rights of any and all persons claming under the act of Congress of 3d March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois." In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the general land office to be hereunto affixed.

Given under my hand, at the city of Washington, the fifth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-second.

MARTIN VAN BUREN, [SEAL.]

By the President:
By A. VAN BUREN, *P. Sec'y.*

Recorded vol. 1, page 149, Ex.

H. M. GARLAND,
Recorder of the General Land Office.

2d. A deed from John L. Bogardus to Isaac Underhill, dated August 5, 1834, conveying said southeast fractional quarter section described in said patent.

3d. A deed dated July 13, 1832, from said Bogardus to Lewis Bigelow and Samuel C. McClure, of same premises.

4th. A deed dated June 6th, 1833, from said McClure to said Bigelow, of same premises.

5th. A deed from said Bigelow to said Underhill, for same premises, dated June 14th, 1838.

6th. A certificate of register Holmes, dated June 2d, 1848, which is as follows:

LAND OFFICE, QUINCY, ILL'S,
2d June, 1848.

I hereby certify, that it appears from the records of this office,

that the legal title to the southeast fractional quarter of sec. 9, in township 8 north, of range 8 east, of the 4th principal meridian, in the district of lands subject to sale at this office, was, on the 5th day of August, 1834, and during the whole of said month, in the United States, and had not been previously sold by the United States, but was subsequently sold, to wit, on the 15th of November, 1837, to John L. Bogardus, under the provisions of the pre-emption act of 1832.

SAM'L HOLMES,
Register.

7th. Alexander's certificate, dated November 17, 1832, which is as follows:

LAND OFFICE, QUINCY, ILLINOIS,
Nov. 17th, 1832.

SIR: Yours of the 31st ultimo was duly rec'd, and in reply thereto, I have to say that your proof of a pre-emption has been duly received, previous to the 5th of Oct'r, partly Mr. Bigelow, and partly by mail, which was adjudged in this office to be sufficient.

Very respectfully, your humble and obedient servant,
SAMUEL ALEXANDER.

JOHN L. BOGARDUS, ESQ.

8th. A record of the circuit court of Peoria county, May term, 1844, condemning a part of lot two, in block fifty, in Bigelow and Underhill's addition to Peoria, for the taxes due thereon, which record is as follows:

Be it remembered, that heretofore, to wit, on the 13th day of April, A. D. 1844, there was filed in the office of the clerk of the circuit court of Peoria county, in the State of Illinois, a report to said court, and certificate of publication thereof, by the collector of taxes for the year 1843 for said county, which said report and certificate, as it remains placed at the head of the common law docket, for the May term, A. D. 1844, of said court, is as follows, to wit:

Report of the collector for the year 1843.

List of lands and other real estate in the county of Peoria, and State of Illinois, on which taxes remain due and unpaid for the year 1843.

Suit for taxes.

STATE OF ILLINOIS
vs.

Patentee.	Description.	No. of acres.	Valuation.	Tax.
*	*	*	*	*

Bigelow and Underhill's addition to Peoria.

Lot.	Blk.	Val.	Tax.
*	*	$*	$*
1	49	1400	9 80
*	*	*	*
2	50	300	2 10
*	*	*	*

The costs on the above lands and town lots already accrued is 10 cents.

Notice is hereby given, that application will be made to the circuit court of Peoria county, at the next term thereof, to be held at the court house in the town of Peoria, on the fourth Monday in the month of May next, for a judgment against the lands and town lots above enumerated for the taxes and costs due thereon for the year 1843, and for an order to sell the lands and town lots for the satisfaction thereof, and all such lands and town lots against which judgment shall be pronounced, shall be exposed to public sale at the court house of said county, on the second Monday next succeeding the said term of the said court, for the amount of taxes and costs due thereon for the year 1843.

JULIUS A. JOHNSON,
Collector for 1843.

PEORIA, *April* 10, 1855.

We hereby certify that the foregoing was duly published, on the 10th of April, 1844, in the Peoria Democratic Press, published in Peoria, Peoria county, Illinois, and that the number of transcripts and notices so published corresponds with the number of newspapers printed and distributed for that week.

ZIEBER & SLOAN.

Endorsed.

STATE OF ILLINOIS,
Peoria County, ss:

I, Julius A. Johnson, collector of said county for the year 1843, do hereby certify that the within tracts and parts of tracts of land and town lots were assessed for taxes in said county, for State and county purposes, for the year 1843, and that the taxes and costs thereon remain due and unpaid, and that the respective owner or owners have no goods and chattels within my county on which I can levy for the taxes, interest, and costs due and unpaid on the same.

Given under my hand this 13th day of April, A. D. 1844.

J. A. JOHNSON,
Collector Peoria county for 1843.

And afterwards, at the same term of said court, the following proceedings were had therein on said report, to wit:

At a circuit court began and held at the court house in the town of Peoria, within and for the county of Peoria, and State of Illinois, on the fourth Monday of May, in the year of our Lord one thousand eight hundred and forty-four, being the twenty-seventh day of the same month—present the honorable John Dean Caton, associate justice of the supreme court of the State of Illinois, assigned to perform the duties of judge of the ninth judicial circuit:

STATE OF ILLINOIS,
Peoria county, ss:

Whereas Julius A. Johnson, collector of said county, returned to the circuit court of said county, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and forty-four, the following tracts and parts of tracts of land, as having been assessed for taxes by the assessor of said county of Peoria for the year 1843, and that the taxes thereon remained due and unpaid on the day of the date of the said collector's return, and that the respective owner or owners have no goods and chattels within his county on which said collector can levy for the taxes, interest, and costs due and unpaid on the following described lands, to wit:

Bigelow and Underhill's addition to Peoria.

Lot.	Block.	Tax, &c.
*	*	$*
1	49	9 90
*	*	*
2	50	2 20
*	*	*

And whereas due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defence (except to such town lots as are laid off on the southwest quarter of section nine, in township eight north, range eight east, as a part of Bigelow and Underhill's addition to Peoria—it appearing to the court, on the suggestion of Charles Ballance, esquire, that the same had been erroneously taxed as town lots; on consideration whereof, it is ordered that no judgment be entered or sale made of such town lots as are laid off on said quarter section) or show cause why judgment should not be entered against the said lands for the taxes, interest, and costs due and unpaid thereon for the year herein set forth—

Therefore, it is considered by the court that judgment be and is hereby entered against the aforesaid tracts and parts of tracts of land, in the name of the people of the State of Illinois, for the sum annexed to each tract or parcel of land, with the costs accrued and

to accrue thereon—being the amount of the taxes and costs due severally thereon; and it is ordered by the court that the said several tracts of land, or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes and costs annexed to them severally, be sold as the law directs.

And afterwards, on the eighth day of June, A. D. 1844, there was issued to the sheriff of Peoria county a precept, by the clerk of said court, under the seal thereof, which, with the return of the said sheriff thereto, is as follows, to wit:

The people of the State of Illinois, to the sheriff of Peoria county, greeting:

STATE OF ILLINOIS,
Peoria county, set:

Whereas Julius A. Johnson, collector of said county, returned to the circuit court of said county, on the thirteenth day of April, A. D. 1844, the following tracts and parts of tracts of land as having been assessed for taxes by the assessor of said county of Peoria for the year 1843, and that the taxes thereon remained due and unpaid on the day of the date of the said collector's return, and that the respective owner or owners have no goods and chattels within his county on which the said collector can levy for the taxes, interest, and costs due and unpaid on the following described lands, to wit:

* * * * * *

Bigelow & Underhill's addition to Peoria.

Lot.	Bl'k.	Val.	Tax.
*	*	$*	$*
1	49	1400	9 80
*	*	*	*
2	50	300	2 10
*	*	*	*

The costs on the above land and town lots already accrued is 10 cents.

And whereas, due notice has been given of the intended application for judgment against said lands, and no owner hath appeared to make defence, or shew cause why judgment should not be entered against the said lands, for the taxes, interest, and costs due and unpaid thereon, for the year herein set forth; therefore, it is considered by the court that judgment be and is hereby entered against the aforesaid tracts and parts of tracts of lands, in the name of the people of the State of Illinois, for the sum annexed to each tract or parcel of land, with the cost accrued and to accrue thereon, being the amount of the taxes and costs due severally thereon. And it is ordered by the court that the said several tracts of land,

or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes and costs annexed to them severally, be sold as the law directs.

Witness William Mitchell, clerk of the said circuit court, and the [SEAL.] seal thereof hereunto affixed, at Peoria, this eighth day of June, A. D. 1848.

WILLIAM MITCHELL,
Clerk.

By virtue of the foregoing process, I did, with the assistance of the clerk of the county commissioner's court of said county, attend at the court-house, in the town of Peoria, on the tenth day of June, A. D. 1844, between the hours of 10 o'clock a. m. and 3 o'clock p. m., proceed to sell each lot or parcel of land described in the foregoing list, at public auction, commencing with the first lot therein described, and sold all the lots (except those on which the taxes were paid to me before sale) to the end of Mills' addition to Peoria, inclusive.

And afterwards, to wit, at three o'clock p. m., adjourned the sale to 10 o'clock a. m. of the 11th day of June instant. June 11th, at 10 o'clock a. m., sold in like manner the lands described in said list, from Mills' 2d addition to the town of Peoria to the end of the said list inclusive, in the order the same are therein described, by offering the whole tract or lot of land for the amount of taxes and costs due thereon, and striking them off to the person or persons who would pay the amount due on each tract of land or town lot for the least number of acres or least quantity.

The said clerk kept a register of said sales, in which was entered each lot or parcel of land exposed to sale by me, the name of the purchaser, his place of residence, and the quantity of land sold.

Dated the 20th day June, A. D. 1844.

SMITH FRYE,
She'ff.

STATE OF ILLINOIS,
Peoria county, ss:

I, Jacob Gale, clerk of the circuit court within and for said county, do hereby certify that the foregoing is a correct transcript from the proceedings and records of said court, in relation to taxable lands, as to lot No. 1, in block No. 49, and lot No. 2, in block 50, in Bigelow and Underhill addition to Peoria, in said county of Peoria, as the same remains of record and on file in my office.

In testimony whereof, I hereto set my hand, and affix the seal of [SEAL.] said court, at Peoria, this fourth day of December, A. D. 1848.

JACOB GALE,
Clerk.

9th. Sheriff's deed, July 16th, 1846, founded upon said proceedings, which sheriff's deed is as follows, to wit:

Know all men by these presents, that whereas, at the May term, 1844, of the circuit court of Peoria county, a judgment was obtained in said court, in favor of the State of Illinois, against the following described town lot, situated in the county of Peoria, in the State of Illinois, viz: Lot number two, in block number fifty, in Bigelow and Underhill's addition to Peoria, for the sum of two dollars and fifty cents, being the amount of taxes, interest, and cost assessed upon the said tract of land, for the year 1843; and whereas, on the tenth day of June, 1844, I, Smith Frye, sheriff of the county aforesaid, by virtue of a precept issued out of the circuit court of the county aforesaid, dated the eighth day of June, 1844, and to me directed, did expose to public sale, at the door of the court-house, in the county aforesaid, in conformity with all the requisitions of the statute in such case made and provided, the tract of land above described, for the satisfaction of the judgment so rendered as aforesaid; and whereas, at the time and place aforesaid, Charles Ballance, of the county of Peoria, and State of Illinois, having offered to pay the aforesaid sum of two dollars and fifty cents, for thirty feet off of the east side of said lot, which was the least quantity bid for, the said tract of land was stricken off to him at that price; and whereas, afterwards, on the fourteenth day of May, A. D. 1846, said Ballance, by endorsement on the certificate of purchase issued to him on said sale, for value received, assigned said certificate, and all the benefits therefrom arising, to Joshua P. Hotchkiss, of said county: Now, therefore, I, Smith Frye, sheriff as aforesaid, for and in consideration of the sum of two dollars and fifty cents, to me in hand paid by the said Charles Ballance at the time of the aforesaid sale, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Joshua P. Hotchkiss, his heirs and assigns, the following described part of a town lot, to wit, thirty feet off of the east side of lot number two, in block number fifty, in Bigelow & Underhill's addition to Peoria, in the county of Peoria, in the State of Illinois, to have and hold unto him, the said Joshua P. Hotchkiss, his heirs and assigns, forever, subject, however, to all the rights of redemption provided by law.

In witness whereof, I, Smith Frye, sheriff as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name and affixed my seal, this sixteenth day of July, 1846.

SMITH FRYE, [SEAL.]
Sheriff.

STATE OF ILLINOIS,
Peoria County, ss:

Be it known, that on the day of the date hereof, personally ap-

peared before me, Jacob Gale, clerk of the circuit court within and for said county, Smith Frye, personally known to me to be the real person whose name appears subscribed to the foregoing deed of conveyance, as having executed the same in the capacity of sheriff of said county, and acknowledged the execution thereof to be his free act and deed for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and the seal of [SEAL.] said court, at Peoria, this sixteenth day of July, A. D. 1846.

JACOB GALE, *Clerk.*

STATE OF ILLINOIS,
County of Peoria.

RECORDER'S OFFICE.

I, Charles Kettelle, recorder of said county, do hereby certify the within deed is duly recorded in said office, in book R., pages 53 and 54, on this 29th day of July, A. D. 1846.

CHARLES KETTELLE.
R. P. Co.

To the record and deed plaintiff's counsel objected, among other reasons, because the defendants were not in a position to avail themselves of the tax title; and the objection was sustained by the court.

10th. The patent certificate upon which plaintiff's patent issued, which is as follows:

LAND OFFICE, EDWARDSVILLE, ILLINOIS.
August 15th, 1845.

Certificate No. 16.

It is hereby certified that in the report dated 10th November, 1820, of Edward Coles, register of the land office at Edwardsville, Illinois, the claim of Thomas Forsyth, under John Baptist Maillet, and in right of his own occupancy and cultivation, is entered as No. 7, and the said Maillett being the inhabitant or settler within the purview of the confirmatory act of Congress, approved 3d of March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois;" and it appearing to the satisfaction of the undersigned, that the said inhabitant or settler did not, prior to the said act of 3d of March, 1823, receive a confirmation of claims, or donation of any tract of land or village lot from the United States: therefore, be it known that the legal representatives of the said Thomas Forsyth, (now deceased,) under said Maillet, in virtue of the confirmatory act aforesaid, are entitled to a patent for the land described, as follows:

The lot containing 102,933 $\frac{93}{100}$ square feet, designated as claim No. 7, excluding therefrom the tract or portion of said lot contain-

ing 27,449 $\frac{7}{100}$, covered by claim No. 14, of Jacques Mette, also under said Maillet, situated in the southeast fractional quarter-section 9, in township 8 north, of range 8 east, of the 4th principal meridian, Illinois, according to the survey approved 1st September, 1840, by the surveyor of the public lands in the States of Illinois and Missouri, and also described in the survey aforesaid, by metes and bounds, as follows, viz: Commencing at a post, at the intersection of the southwest edge of the cross street B, with the northwest edge of First street, which post is the east corner of this lot; thence with the northwest edge of First street south, 43½° west 40 feet, a post and stone set by it 235 feet 3 inches and one-third of an inch, to a post the east corner of the survey of claim No. 14, 320 feet 10 inches. The south corner of this lot, and of the survey of claim No. 14, and the east corner of lot No. 2; thence north 46½ west 320 feet 10 inches, to a post in the southeast edge of Second street, the west corner of this lot, and of the survey of claim No. 14, and north corner of lot No. 2; thence with southeast edge of Second street north 43½° east, 85 feet 6 inches and ⅔ of an inch to a post, the north corner of the survey of claim No. 14, 320 feet 10 inches, to a post at the intersection of the southeast edge of Second street, with the southwest edge of the cross street B, which post in the north corner of this lot; thence with the southwest edge of the cross street B, south 46½° east, 320 feet 10 inches to the place of beginning.

This lot, as surveyed and here described, contains 102,933 square feet, and $\frac{93}{100}$ of a square foot, and includes the survey of the claim No. 14, confirmed to Jacques Mette, as presented in the plat.

JACOB JUDY,
Register.
J. G. CAMERON,
Receiver.

11th. A record of the proceedings of the land commissioners at Detroit, which is as follows:

Extract No. 1.

Transcript of the minutes of the proceedings of the land office at Detroit, commencing the 2d day of January, and ending the 27th of February, 1809, both days inclusive.

On Monday, the 2d day of January, 1809, the board met, at 9 in the forenoon, pursuant to adjournment, and there being no business, adjourned to Wednesday next, at 9 in the forenoon.

* * * * *

Extract No. 2.

On Monday, the 20th day of February, 1809, the board met, at 9 in the forenoon, pursuant to adjournment.

* * * * *

Thomas Forsyth, No. 618.

The board took into consideration the claim of Thomas Forsyth to a tract of land situate at Gross Point, and the notice filed by Sol. Sibley, esq., his attorney, the 10th Decem'r last, was read, in the words and figures following, to wit:

Extract No. 3.

To the register of the United States land office at Detroit:

SIR: Notice is hereby given that Thomas Forsyth makes entry and claim with the commissioners of the land office at Detroit, to have and hold to himself, his heirs and assigns, a certain farm or tract of land in the district of Detroit, and Territory of Michigan, upon the Lake St. Clair, of six acres in front, by 100 acres in depth, making 600 acres, more or less, bounded in front by Lake St. Clair, in rear by vacant lands, on the upper side by other lands or farms of claimant, on the lower side by a tract of land or farm of John Kinzie, sets up title and claim under deed of conveyance of William Forsyth, his late father, deceased, of the 20th day of December, 1794; likewise sets up title and claim, by virtue of long, peaceable, and continued occupancy, possession, and improvements had, made, and done by himself, and those under whom he claims and derives title.

For THOMAS FORSYTH.
SOLO. SIBLEY,
Att'y and Ag't.

December 10th, 1808.

This tract contains, by estimation, 600 acres, it being six acres in front, by one hundred in depth, bounded in front by Lake St. Clair, in rear by unlocated lands, on the upper side by lands of the claimant, and on the lower side by lands of John Kinzie.

Whereupon Simon Yax was brought forward as a witness, in behalf of the claimant, who being duly sworn, deposed and said, that previous to the 1st July, 1796, William Forysth cultivated the premises as tenant to the claimant, since which time the claimant has caused the premises to be cultivated every year to this day; about 18 or 20 acres are under cultivation.

And thereupon it doth appear to the commissioners that the claimant is entitled to the above described tract of land, and that he have a certificate thereof, which certificate shall be No. 618, and that he cause the same to be surveyed and a plot of the survey, with the quantity of land therein contained, to be returned to the register of the land office at Detroit.

Thomas Forsyth, No. 619.

The board took into consideration the claim of Thomas Forsyth to a tract of land situate at Gross Point, which was entered with the former commissioners of the land office at Detroit, in vol. 1, page 454, under the date of 23d December, 1805.

This contract contains, by estimation, 366⅔ arpents, it being three arpents and ⅔ of an arpent in front by one hundred arpents in depth, bounded in front by Lake St. Clair, in rear by unlocated lands, above by lands of Robert Forsyth, and below by lands of the claimant.

Whereupon Simon Yax was brought forward as a witness in behalf of the claimant, who being duly sworn deposed and said that previous to the 1st July, 1796, Pierce Mayett was living on the premises as tenant of the heirs of the late Wm. Forsyth, dec'd, that from that time to four or five years ago the premises have always been occupied by tenants, and that for these 4 or 5 years the premises have remained idle.

The said Thomas Forsyth claims by virtue of a deed of partition recorded with the former commissioners of the land office at Detroit, in vol. 1, page 150. Postponed.

* * * * * *

RUBEN ATTWATER,
PETER ANDRAIN,
JAMES ABBOTT,

EXTRACT No. 4.

Index to the transcript of decisions of the commissioners of the land office at Detroit, for Jan'y and Feb'y, 1809.

Name of the person.	DECISION OF COMMISSIONERS.		CERTIFICATE.		REPORT OF THE FORMER COMMISSIONERS.
	Date.	Page of transcript	Date.	Number of acres.	Date of their proceedings thereon.
* * *	* * *	* *	* * *	* *	* * *
* * *	* * *	* *	* * *	* *	* * *
	[18 Jan'y, 1809.]		[18 Feb., 1809.]		(Vol. 1, page 359, 3d Dec'r, 1805, rejected.)
Robert Forsyth.....	17 Feb'y, do.	34	17 do. do.	600 acres.	
Thomas Forsyth.....	17 do. do.	35	17 do. do,	$366\frac{2}{3}$ do.	1 449, 23d, do. do.

[Extract No. 6.]

Extract No. 7.

Transcript of the minutes of the proceedings of the commissioners of the land office at Detroit, from the 2d day of April to the 29th of June, 1810.

On Monday, the 2d day of June, 1810, the board met at 9 in the forenoon pursuant to adjournment.

* * * * * *

On Friday, the 29th day of June, 1810, the board met, at 9 in the forenoon, pursuant to adjournment.

Thomas Forsyth, No. 619—Reconsidered.

The board reconsidered the claim of Thomas Forsyth, No. 619, to a tract of land situate on Lake St. Clair, which was postponed on the 20th day of February last, in vol. 7, page 35, and thereupon it doth appear to the commissioners that the claimant is entitled to the said tract of land, and that he have a certificate thereof, which certificate shall be No. 619, and that he cause the same to be surveyed and a plot of the survey, with the quantity of land therein contained, to be returned to the register of the land office at Detroit. And then the board adjourned to Monday next, at 9 in the forenoon.

RUBEN ATTWATER,
PETER ANDRAIN,
JAMES ABBOTT.

GENERAL LAND OFFICE,
March 31*st*, 1849.

SIR: Pursuant to your application of the 7th instant, I herewith transmit to you an exemplification, duly certified under seal, containing extracts from the transcripts in this office in the following cases:

1st. Extracts from the transcript of the proceedings of the board of commissioners in 1809, in the claims No. 618 and 619 of Thomas Forsyth, manuscript transcript, No. 16, pages 1, 34, 35, 37.

State papers, public lands, D. Green, vol 1, pages 460, 461, and

2d. Extracts from the transcript of the proceedings of the board in 1810, on the claim No. 619, manuscript transcript, page 1, 26, 27.

Same volume State Papers, page 493.

Very respectfully your ob't servant,
RICHARD M. YOUNG,
Commissioner.

C. BALLANCE, Esq., Peoria, Illinois.

EXTRACT No. 9.

Index to the transcript of decisions of the commissioners of the land office at Detroit, 1st April to 30th June, 1810.

Name of the person.	DECISION OF COMMISSIONERS.		CERTIFICATE.		REPORT OF THE FORMER COMMMISSIONERS.
	Date.	Page of transcript	Date.	Number of acres.	Date of their proceedings thereon.
* * *	* * *	* *	* * *	* *	* * * *
* * *	* * *	* *	* * *	* *	* * * *
Thomas Forsyth	(22d April, 1810) 29th June, do.	26	(22d April, 1810) 29th June, do.	366⅔ acres.	

[Extract No. 10.]

GENERAL LAND OFFICE.

I, Richard M. Young, Commissioner of the General Land Office, do hereby certify that the foregoing extracts, No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, on pages 1 to 6 inclusive, are true extracts from the original transcripts in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, this thirty-first day of March, 1849.

[SEAL.]

RICHARD M. YOUNG,
Commissioner.

12th. Two patents issued to Thomas Forsyth for lots at Gross Point, which are as follows:

James Madison, President of the United States of America, to all to whom these presents shall come, greeting:

Know ye, that Thomas Forsyth, having lodged in the treasury a certificate of the register of the land office at Detroit, whereby it appears that the said Thomas Forsyth is confirmed by virtue of an act of Congress, entitled, "An act regulating the grants of lands in the Territory of Michigan," in his claim to a certain tract of land containing three hundred twenty-four and $\frac{35}{100}$ acres, situated on the border of Lake St. Clair, bounded and described as follows, to wit:

Beginning at a post standing on the border of Lake St. Clair, between this tract and a tract confirmed to the claimant. Thence north sixty-four degrees west, three hundred chains, forty-five links to a post. Thence north twenty-six degrees east, ten chains eighty-three links to a post, the southwest corner of a tract confirmed to Robert Forsyth. Thence south sixty-four degrees east, two hundred ninety-eight chains fifty-four links, to a post standing on the border of Lake St. Clair. Thence along the border of said lake south sixteen degrees west, eleven chains to the place of beginning. There is granted by the United States, unto the said Thomas Forsyth, the tract or parcel of land above-described, to have and to hold the said tract or parcel of land, with the appurtenances, unto the said Thomas Forsyth, his heirs and assigns forever.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand at the city of Washington, the tenth day of July, in the year of our Lord one thousand eight hundred and eleven, and of the independence of the United States of America the thirty-sixth.

By the President.

Secretary of State.

James Madison, President of the United States of America, to all to whom these presents shall come, greeting:

Know yea, that Thomas Forsyth having lodged in the treasury, a certificate of the register of the land office at Detroit, whereby it appears that the said Thomas Forsyth is confirmed, by virtue of an act of Congress, entitled, "An act regulating the grants of land in the Territory of Michigan," in his claim to a certain tract of land containing five hundred twenty-seven and $\frac{1}{10}$ acres, situate on the border of Lake St. Clair, bounded and described as follows, to wit:

Beginning at a post standing on the border of Lake St. Clair, between this tract and a tract confirmed to John Kinsie; thence north sixty-four degrees west, three hundred two chains fifty-five links to a post. Thence north twenty-six degrees east, seventeen chains fifty links to a post, the southwest corner of a tract confirmed to the claimant. Thence south sixty-four degrees east, three hundred chains forty-five links, to a post standing on the border of Lake St. Clair. Thence along the border of said lake, south thirty-one degrees west, seven chains. Thence south eleven degrees thirty minutes west, ten chains eighty-eight links, to the place of beginning. There is granted by the United States unto the said Thomas Forsyth the tract or parcel of land above described, to have and to hold the said tract or parcel of land, with the appurtenances, unto the said Thomas Forsyth, his heirs and assigns forever.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand at the city of Washington, the seventh day of October, in the year of our Lord one thousand eight hundred and eleven, and of the independence of the United States of America the thirty-sixth.

By the President.

Secretary of State.

13th. It was agreed that on the premises in dispute there was a dwelling house, which was occupied by Isaac Underhill, claiming under the title aforesaid, from the 5th day of August, A. D. 1834, unto the 16th day of November, A. D. 1842, when he sold the said premises, by a properly executed deed of that date, to Jesse L. Knowlton, who occupied the same from that time until the 30th day of November, A. D. 1843, on which day he sold the same, by a properly executed deed, to Joshua P. Hotchkiss, one of the defendants, who put in James Kelsey, the other defendant, as his tenant; and said James Kelsey occupied said premises as the tenant of said Hotchkiss, from that day until the commencement of this suit; and that there was a continuous possession of said premises, from the possession taken by said Underhill as aforesaid to the time of the

commencement of this suit, and that soon after said Hotchkiss sold all his right and title to said premises to Charles Ballance, who is now defending this suit for his own benefit.

14th. It was admitted that the Thomas Forsyth, to whose representatives said Peoria lot No. seven was granted by said first mentioned patent, was the same Thomas Forsyth to whom said confirmation, at Cross Point, near Detroit, in Michigan, were made.

15. It was admitted that the premises in controversy were worth more than two thousand dollars; and the above was all the evidence in the case.

Whereupon said cause having been heard and said, and the court being sufficiently advised of and concerning the premises, found the issue in favor of said plaintiff, and entered judgment accordingly.

And thereupon defendants move the court to set aside said judgment and grant them a new trial, for the reason that said decision was against the evidence in the case, which motion the court overruled. To all of which findings, rulings, decisions, and opinions, defendants then and there excepted, and prayed that this his bill of exceptions might be sealed, signed, and made of record, which is done, &c.

Exceptions allowed, Jan'y 24th, 1855.

THOMAS DRUMMOND, [SEAL.]

Endorsed: Filed Jan'y 24th, 1855.

WM. POPE,
Clk.

And on the next day, to wit, the 25th day of January, A. D. 1855, a writ of error issued out of the office of the clerk of said circuit court, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Illinois, ss:

The United States of America, to the judges of the circuit court [SEAL.] of the United States for the district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Robert Forsyth, and against James Kelsey and Joshua P. Hotchkiss, a manifest error hath happened to the great damage of the said James Kelsey amd Joshua P. Hotchkiss, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United

States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law custom of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the said [SEAL.] Supreme Court of the United States, this 25th day of January, A. D. 1855, and of our independence the 79th year.

WM. POPE, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the foregoing transcript to be a true, full, and perfect copy from the record of all the proceedings which were had in said circuit court for the district of Illinois, in the said cause of Robert Forsyth vs. James Kelsey and Joshua P. Hotchkiss, as the same now appears in my office.

In testimony whereof I have hereunto set my hand and affixed [SEAL.] the seal of said court at my office in Chicago, in said northern district of Illinois, this second day of June, A. D. 1856.

WILLIAM H. BRADLEY,
Clerk.

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And the said defendants come and say that in the proceedings and judgment aforesaid there is manifest error in this, to wit:

1st. The said court erred in not dismissing said cause for want of a bond for costs at the time of the commencement of the suit.

2nd. It was error to try this cause without a jury.

3rd. The court erred in refusing a new trial at common law.

4th. The court erred in attaching unreasonable and unjust conditions to the order, setting aside the first judgment obtained in this cause.

5th. The court erred in not granting a new trial in said cause upon the agreement and disclaimer tendered by defendants.

6th. The court erred in permitting improper evidence to go to the jury.

7th. The court erred in ruling out proper evidence offered to the jury by defendants, all of which they are ready to verify.

For which and for other manifest errors in the said record and proceedings appearing, defendants pray that the same may be set aside, disannulled, and for nothing esteemed, &c.

C. BALLANCE.